JD–51–06
Williamsburg, VA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

UNITED STATES POSTAL SERVICE

and

Cases 5–CA–32295
5–CA–32762
5–CA–32763

AMERICAN POSTAL WORKERS UNION,
PENINSULA FACILITY AREA LOCAL 6726, AFL–CIO

Stephanie Cotilla and *Thomas P. McCarthy, Esqs.*, for the General Counsel.
Peter W. Gallaudet, Esq., of New York, NY, and *Stephen W. Furgeson, Esq.,* of Washington, DC, for the Respondent.

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried in Williamsburg, Virginia, on January 22–25, 2006. The charge in Case 5–CA–32295 was filed January 11, 2005. The charges in Cases 5–CA–32762 and 5–CA–32763 were filed November 14, 2005. An order consolidating cases and a consolidated complaint and notice of hearing issued January 6, 2006.

The consolidated complaint, as amended,[1] alleges the Respondent: (1) violated Sections 8(a)(5) and (1) of the National Labor Relations Act on numerous occasions between July 26, 2004, and October 24, 2005, by failing and refusing to provide, in a timely manner, the American Postal Workers Union, Peninsula Facility Area Local 6726, AFL–CIO's (the Union) collective-bargaining representative with requested information relevant to its collective-bargaining agreement with the Respondent regarding the Williamsburg post office; (2) violated Section 8(a)(5) and (1) on several occasions between October 26 and November 19, 2004, by altering the collective-bargaining agreement and the parties September 23, 2004 agreement regarding the method of granting steward time;[2] (3) violated Section 8(a)(1) on September 23, 2004, when postmaster Carlton told an employee "the gloves were off" and threatened to abolish jobs; (4) violated Section 8(a)(1) on December 3, 2004, when Carlton told employees the Union would get the requested information, but it would be slow in coming and it "would cost her"; (5) violated Section 8(a)(3) and (1) on September 27, 2004, by increasing the job duties, changing the work assignments, and taking away the desk of, and denying overtime opportunities to, the union president and chief shop steward, Vicki Marsh, because of her union activities.

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[1] The parties stipulated on the record to amendments of paras. 13, 23, 25, 27, and 28 of the consolidated complaint. (Tr. 14, 189–190, 408–409, 683; GC Exh. 1-R.)

[2] The General Counsel withdrew the November 12 date from para. 20 of the complaint, as amended, in order to conform the pleadings to the proof. (GC Br. at 5.)

In its amended answer to the consolidated complaint, dated January 23, 2005,[3] the Respondent essentially denied the material allegations and asserted that any failure to furnish information during the period of July 22 to November 4, 2004 was resolved by agreement of the parties at a labor-management meeting on December 3, 2004. The Respondent also asserted that its failure, if any, to honor the September 23, 2004 oral agreement regarding steward time, amounted to a mere breach of the collective-bargaining agreement and did not rise to the level of a unilateral change in conditions violation of Section 8(a)(5).

At the hearing, the parties were afforded a full opportunity to call and examine witnesses, present oral and written evidence, argue orally on the record, and file posthearing briefs. On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

Findings of Fact

I. Jurisdiction

The National Labor Relations Board has jurisdiction over this matter by virtue of section 1209 of the Postal Reorganization Act. The Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. The Respondent's Operations

The Williamsburg, Virginia post office consists of the North Boundary Street and Monticello Station facilities.[4] The two facilities employ a total of approximately 120 employees. Jerome Butler is the Respondent's area manager of post office operations. At certain times relevant to this case, Kenneth Carlton served as Williamsburg postmaster, and Kevin Crittenden served as customer service manager. In Carlton's absence, either Dennis Johnson or Betty Tomes served as the officer-in-charge. Crittenden's supervisory staff at the North Boundary Street facility included Pamela Beverly, George Sutton, and Allison Rogers.

Vicki Marsh, the central character in this controversy, is employed by the Respondent at its North Boundary Street facility as a sales, service, and distribution associate. Marsh's duties include sorting mail, exclusive administration of the facility's post office box section (box section), and providing lunch relief at a customer service window. Marsh's regularly scheduled shift starts at 5 a.m., but she is frequently authorized or directed to work preshift overtime to enable her to sort mail before performing her other functions. Of particular interest to the Respondent is her administration of the box section, which involves the opening of approximately 100 post office boxes and closing of 75 boxes on a monthly basis.[5]

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[3] The amended answer was inadvertently dated January 23, 2005, but evidently referred to January 23, 2006. (GC Exh. 2.)

[4] The North Boundary Street facility is also referred to as facility 23185, while facility 23188 refers to the Monticello Station facility.

[5] Tr. 570–573, 689, 632–633.

B. The Union's Role at the Williamsburg Facilities

The Respondent and the American Postal Workers Union (APWU) are parties to a collective-bargaining agreement, which was in effect from November 21, 2000, to November 20, 2003, and extended by mutual agreement until November 20, 2008.[6] It sets forth numerous provisions relevant to this controversy. As designated by the APWU and set forth at Article 1.1 of the agreement, the Union is the exclusive bargaining representative of all postal clerks, maintenance employees, motor vehicle employees, mail equipment shop employees, and material distribution centers employees at the Respondent's Williamsburg facilities (the bargaining unit). Employees excluded from the bargaining unit include all professional employees, employees engaged in personnel work in other than purely nonconfidential clerical capacities, Postal Inspection Service employees, supplemental work force employees, rural letter carriers, mail handlers, letter carriers, guards, and statutory supervisors.[7]

Marsh was the president of the Union until December 2005; she has been and continues to serve as chief shop steward at the North Boundary Street facility. Gary Swarthout had been the shop steward at the Monticello Station facility until October 2005. When Swarthout resigned that position, Marsh also assumed the steward duties for the Monticello Station facility. Pursuant to Article 17.3, a steward, when necessary, is allowed to leave the work area "to investigate and adjust grievances or to investigate a specific problem to determine whether to file a grievance." The steward must, however, request permission from the immediate supervisor and such request "shall not be unreasonably denied." When stewards perform these duties, the time recorded on their clock rings is coded "608," and for payroll purposes it is coded "070." The Respondent pays employees performing steward duties as though they were working. However, when an employee performs official business as an officer for the Union, that time is denoted as "official union leave," or Code 084.[8]

This case revolves around Marsh's information requests relating to the clerk craft at the Williamsburg post office during 2004–2005. The information requests pertained to the Respondent's deployment of casual, limited/light duty and part-time personnel, the temporary assignment of bargaining unit members to temporary supervisory positions, and overtime by employees not on an overtime-desired list. As a result of that dispute, the Respondent allegedly denied union time to Marsh, increased and changed her job duties, took away her desk, and threatened to change employees work schedules.

The primary vehicle for obtaining information under the collective-bargaining agreement is set forth at Article 31.3. That provision requires that the Respondent "make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration, or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement." In order to "insure local contract compliance and foster a more professional working relationship" the parties have developed side agreements and manuals pursuant to Article 19. One such manual, the Joint Contract Application Manual (JCAM), provides, in pertinent part, that information requested by the Union "will be provided within seven (7) days of the request, unless there is a mutually agreed upon extension of time limits. If the information is

[6] The collective-bargaining agreement was received as Jt. Exh. 1. (GC Exh. 1-R, 2.) References to "Article" throughout this decision refer to the provisions of that agreement.

[7] Jt. Exh. 1, Articles 1.1 and 1.2.

[8] Jt. Exh. 4; Tr. 515–519.

not provided, management must provide a written statement explaining why the information cannot be provided within seven (7) days of the request."[9]

C. The Union's Information Requests

The July 26 and August 11 information requests

Overtime work by employees not on an "overtime desired" list is governed by Article 8.4: "Full-time employees not on the 'Overtime Desired' list may be required to work overtime only if all available employees on the 'Overtime Desired' list have worked up to twelve (12) hours in a day or sixty (60) hours in a service week."

On July 26, 2004, within the context of policing compliance with Article 8.4, Marsh submitted an information request to Beverly for "Hours Analysis Reports" starting with pay period 16-2 for the North Boundary Street facility and pay period 15-2 for the Monticello Station facility. The reports contain weekly breakdowns of each employee's regular, overtime, annual leave, and sick leave hours accrued or used. On July 26, Marsh received only the Hours Analysis Reports for pay period 16-2 for the North Boundary Street facility. On August 11, she followed up by submitting another information request to Carlton. The form stated that she needed the reports starting with pay period 17-1 for the North Boundary Street facility, and pay period 15-2 for the Monticello Station facility. Marsh also wrote that she needed the information in order "to keep a record of hours used and overtime hours worked" and the form "can be used to substantiate or eliminate the need to file a grievance." Marsh received the Hours Analysis Reports for pay periods 17-1 or 17-2 for the North Boundary Street facility, and pay period 15-2 for the Monticello Station facility, on or about December 2, 2004.[10]

The September 7 information request

Limited/light duty employees are employees who "through illness or injury are unable to perform their regularly assigned duties" and are reassigned to temporary or permanent light duty or other assignments. The assignment of ill or injured regular force employees is governed by Article 13.4, which provides: "Every effort shall be made to reassign the concerned employee within the employee's present craft or occupational group, even if such assignment reduces the number of hours of work for the supplemental work force." This provision is amplified by Section 546.142 of the Employee and Labor Relations Manual, which states: "[t]o the extent that there is adequate work available within the employee's work limitation tolerances, within the employee's craft, in the work facility to which the employee is regularly assigned, and during the hours when the employee regularly works, that work constitutes the limited duty to which the employee is assigned.[11]

On September 7, 2004, concerned that limited/light duty employees might be performing work that should be performed by employees in the clerk craft, Marsh verbally requested weekly "flash reports" from Carlton and Crittenden for the North Boundary Street and Monticello Station

[9] The source of this provision is an "MOU, NLRB Dispute Resolution Process, July 15, 1997. (GC Exh. 5, p. 163, number 24.)

[10] Beverly did not dispute that Marsh gave her the information requests. (Tr. 295–303; G.C. Exh. 15–17.) She testified that she occasionally forgot to give Marsh the reports. She also testified that she told Marsh, at a December 3 meeting, that she had provided the information. (Tr. 708–709.)

[11] G.C. Exh. 21, p. 468.

facilities. Flash reports contain the total number of hours used in the letter carrier and clerk crafts, as well as the mail volume. Carlton and Crittenden agreed to provide Marsh with the reports. On October 21, Marsh followed up by submitting an information request to Crittenden for:

> Weekly flash report for 23185 and 23188 for the past 6 months;
> Daily manual distribution volume for the past 6 months if not contained on Flash report (parcels, letters and flats) for 23185 and 23188;
> Office complement for Williamsburg as of January 2004 and as of October 2004.

On or about December 2, 2004, Marsh received copies of flash reports for the period of August 14 to September 30, but nothing else in response to the information request.[12]

The September 8 and 20 information requests

On September 8, 2004, also relating to the issue of limited/light duty clerical employees, Marsh provided Carlton with three separate information requests entitled, "Hours Analysis Of All Clerk Duties" for three clerks assigned to limited/light duty—Gwen Cook, Shirley Shabazz, and Madonna Stands. Cook and Shabazz were assigned to the North Boundary Street facility; Stands was assigned to the Monticello Station facility. On September 20, 2004, Marsh submitted to Carlton an additional, but similar information request relating to Laurie Fuith, a limited/light duty clerk at the Monticello Station facility.[13] The requests broke down as follows: Hours Analysis Report for each employee since starting date; work limitations for current assignment; current Form 50; and a copy of offer of work duties for each employee's current limited/light duty assignment.[14]

On or about December 2, 2004, Carlton provided Marsh with Hours Analysis Reports for the most recent 1-month period for Cook, Stands, and Fuith. He also informed Marsh there were no Hours Analysis Reports for Shabazz and Fuith because they were letter carriers. In the alternative, Carlton informed Marsh of the duties Shabazz and Fuith performed, but did not provide a daily breakdown of the hours they spent on each duty. Furthermore, he never provided Marsh with the requested information relating to their work limitations, current Form 50s, or offers of work duties.[15]

The September 21 meeting

On September 21, 2004, Marsh met with Butler and expressed concern that she was not receiving information requested from supervisors. She complained that limited/light duty employees were improperly assigned to work in the clerk craft and were performing work that should be performed by bargaining unit employees at the North Boundary Street and Monticello Station facilities. Marsh also complained that custodians were being assigned work in other crafts and that an additional custodian should be hired.[16]

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[12] Respondent did not deny its failure to provide all of the documents requested. (Tr. 55–56 303–304; G.C. Exh. 6, p. 9, para. 40; GC Exh. 26.)

[13] GC Exh. 18–20, 25.

[14] These forms were received in evidence only as samples. (G.C. Exh. 22–24: Tr. 313–318.)

[15] This finding of fact is based on Marsh's credible and uncontradicted testimony. (Tr. 318, 321–322, 324.)

[16] There is no dispute regarding Marsh's reason for requesting the meeting. (Tr. 345–350, 886–887.)

After raising her concerns, Marsh asked Butler for the following information: Form 50's for all limited/light duty and casual employees assigned to the clerk craft; flash reports; a staffing study detailing the number of employees assigned to each facility and their duties; the work requirements for custodians, including the jobs required and the time required to do each job; and an office complement. Butler stated that he would ask Carlton to direct supervisors to provide Marsh with most of the information requested, including Form 50s for the casual employees. He did not, however, see the relevance of Form 50's for limited/light duty employees and refused to produce them. Marsh responded that limited/light duty employees affected the work hours or wages in the clerk craft. Marsh did not, however, receive any information from Butler.[17]

The September 23 meeting

At the request of Gary Swarthout, the Union's vice president and the Monticello Station facility's chief shop steward, a labor-management meeting was held in Carleton's office on September 23, 2004. Others in attendance included Marsh and Diane Rutkowski, a clerk/secretary who took minutes.[18] The meeting began with Carlton's discussion of a new automated system used to record sick calls. His next item for discussion related to the overuse of overtime. Carlton explained that employee work hours had increased, but work volume was down. Marsh responded that the area served by the Williamsburg facilities was unique within the District. Carlton then stated that he would seek to increase productivity. Marsh responded that the process by which employees recorded their work activities (clock rings) may be part of the productivity problem. Carlton said to expect a significant reduction in the amount of manual flats due to automation. Marsh then raised the agenda items on her list, which included the Respondent use of casuals and limited/light duty employees, overtime assignments, problems in getting responses to information requests, and Marsh's inability to get sufficient union time.[19] Based on excerpts of the pertinent portions of the minutes, the following discussion ensued:

1. Improper uses of Casual Employees – Casuals are being used year-round and in more than one craft. If this is being done, it should be reflected in the employee's Form 50. Also, they are being used in "preferential jobs" (which Vicki defined as being a job deemed preferential by a senior employee).[20] Mr. Carton stated that no job is a "preferential job." Vicki claimed that this term is defined in the National Agreement and will bring the information to Mr. Carlton. Casuals are being trained on the scheme when PTF employees should be trained first. Mr. Carlton said that he stopped the training of the casuals. The employees who should be trained are: A. Dandridge, J. Soto, S. Schlademan, T. Adams, and the new PTF (name unknown at meeting time). Also, Vicki contended that she is not given the

[17] Marsh and Butler provided fairly consistent testimony regarding their meeting. (Tr. 346, 349–355, 886–887; GC Exh. 34a, 34b.)

[18] Tr. 123, 356; GC Exh. 13.

[19] GC Exh. 13a.

[20] Pursuant to Article 7.1, "casual employees" are limited to "two (2) ninety (90) day terms of employment in a calendar year, and there are aggregate limits on the percentage of the Respondent's work force that can consist of casuals. They may be utilized for a limited time, 'but may not be used in lieu of full or part time employees." As such, the Respondent is obligated to "make every effort to insure that qualified and available part-time flexible employees are utilized at the straight-time rate prior to assigning such work to casuals."

time/training records for the employees currently in scheme training. She was tasked with monitoring the training, and cannot do so without this information. Mr. Carlton said that he would correct this issue immediately by instructing the instructors to give Vicki this information immediately. Both parties agreed that the PTFs should eventually be trained on both 23185 and 23188 schemes.

2. Limited Duty Employees – Vicki stated that there is improper use of limited duty carriers in the clerk craft. (i.e. M. Stands, G. Cook, L. Fuith and S. Shabazz.) The APWU has been unable to get CA-7s on these employees to determine if they are working within their limitations. The proper pecking order has not been followed with these employees. Employees are to receive light duty 1.) in their own craft, 2.) in their own station, and 3.) on their own tour. Vicki also stated that management has only 7 days from the date of request to provide information. Mr. Carlton said that he will instruct the Supervisors to provide the APWU with the information requested.

3. Timekeeping Functions – No automatic clock rings – 3 employees are on auto clock rings (i.e., M. Stands) (S. Shabazz and L. Fuith complete a green card 2 weeks in advance of work schedule.) Management has been informed that the APWU needs to know what duties/functions these employees are performing. Without proper clock rings, these duties cannot be monitored. Mr. Carlton stated that he would instruct the Supervisors to provide this information to the APWU.

4. Limited Duty Employee not working scheduled hours – M. Stands, at the Monticello Station (office of MPOO Butler) has not been working regularly scheduled hours. Vicki interviewed a Supervisor and was informed that Ms. Stands was not at work for 8 hours (for which she was paid by auto clock rings) on a particular workday. Mr. Carlton stated that he will instruct Manager, Customer Services, Kevin Crittenden to order a time badge for Ms. Stands. He also stated that Ms. Stands does not work for him and this problem should be addressed to MPOO Butler.

* * *

6. Overtime – Non-ODL employees are being scheduled first, instead of the ODL employees. ODL employees are being called in to work. The ODL employees should be scheduled first. Mr. Carlton's response was that overtime is being eliminated anyway. Obviously, there was a mistake made in scheduling and the Supervisor corrected it by calling in the ODL employees.

7. Notification of 204B Assignments – 1723s are not being submitted to the APWU for higher-level assignments. The 1723s should be done in advance, and copies given to the APWU and to the office for OPF filing. Mr. Carlton will instruct the Supervisors to provide this documentation in a timely manner.

8. Limitation of Union Time – Vicki has not been given the opportunity to have union time. Previously, it was agreed that she could have the hour between 9:30 a.m. and 10:30 a.m. Lately, she has not been able to take this hour because of the mail flow and window service needs. Mr. Carlton will instruct the Supervisors to allow

Vicki the proper time (1 hour) for Union business once the First Class mail is processed.[21]

9. Holiday Scheduling – The pecking order is not being followed. Supervisors are supposed to use volunteers first and use Casuals and PTFs before scheduling non-volunteers. Supervisors are repeatedly scheduling the same employees for all of the holidays. Mr. Carlton stated that Supervisors will not schedule PTFs and Casuals before scheduling non-volunteers. Vicki stated that this policy does not follow the Local Agreement.

10. APC Staffing – The Automated Postal Center should be manned by an SSDA or SSA. Only one SSA was trained on 9/17/04 (J. Adams.) The primary clerk is now a limited duty carrier (G. Cook) and the back-up clerk is a General Clerk (D. Rutkowski.) Neither employee has stock accountability. Mr. Carlton stated that Supervisor Sutton will train the clerk in charge of vending (J. Soto) to be the primary maintainer of the APC. Mr. Soto is currently on leave, so Mr. Sutton will train him upon his return. Mr. Adams will serve as the back-up. Mr. Carlton also added that Ms. Cook's function is to be a "greeter."[22]

Although accurately conveying most of the details from the meeting, the minutes did not reflect the argumentative nature of the discussion between Marsh and Carlton. Marsh complained about the difficulty of getting documents from supervisors. Carleton asked why Marsh needed specific commitments. Marsh replied that he failed to follow up with previous assurances. The tension crested when Marsh asked Carlton to stop interrupting so they "could have constant attention to this." Carlton responded that if Marsh wanted constant, she would get constant and the "gloves were off."

Toward the latter part of the meeting, Marsh complained that part-time flexible clerks were working more than 40 hours per week.[23] Invoking the maximization provision at Article 7.3, Marsh asserted that these employees should be converted to full-time positions.[24] Carlton angrily responded that Marsh previously agreed to allow him the flexibility to use part-time flexible employees. In exchange, Carlton agreed to refrain from "reposting" full-time regular clerk positions and permit "reversion" in order to assign more of them to regularly scheduled

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[21] The parties disagree as to whether a specific agreement was reached at the September 23 meeting to give Marsh union time between 9:30 and 10:30 p.m. It appears this was only a target, since Marsh and Carlton each testified that they agreed Marsh would be granted an hour, "as-needed," immediately following the processing of the first-class mail. (Tr. 373, 830.)

[22] The parties do not dispute the general accuracy of the minutes, but also agree that the meeting became contentious. (GC Exh. 13; Tr. 83, 123, 371, 834.)

[23] Article 7.1 defines part-time employees as those "assigned to regular schedules of less than forty (40) hours in a service week, or shall be available to work flexible hours as assigned by the Employer during the course of a service week."

[24] Article 7.3 requires that 80 percent of the Respondent's regular work force at the Williamsburg post office consist of full-time bargaining unit employees. Consistent with that requirement, it provides two additional measures for the perpetuation of the full-time work force. First, it requires the Respondent "maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules in all postal installations." Secondly, it provides that the employment of a part-time flexible employee for "eight (8) hours within ten (10), on the same five (5) days each week and the same assignment over a 6-month period will demonstrate the need for converting the assignment to a full-time position.

work on Saturdays. The likely consequence of such a change is that employee schedules would be changed and, instead of earning overtime pay on a Saturday, that day would become a regularly scheduled workday for certain bargaining unit members. Such a move would have addressed the overtime concern that Carlton previously expressed at the September 23 meeting.[25] As a result, Carlton stated that he would disregard their agreement and consider "reposting" positions instead of allowing the "reversion" of the positions.[26]

The meeting ended on an angry note. After Marsh and Rutkowski left, Carlton turned to Swarthout and said that "the gloves are off. If she wants to act like this, I can tell you I can abolish every job in here." Swarthout urged Carlton to calm down and that he would not need to resort to such a measure. However, Carlton reiterated, "nope, that's what I'm going to do." Then they were interrupted when someone knocked on the door and Swarthout left the room.[27]

D. Events Following the September 23 Meeting

The October 21 information request

On October 21, 2004, Marsh turned her focus to the complement of part-time employees. She suspected that the number of hours worked by part-time employees might require conversion of their positions to full-time positions. Accordingly, Marsh submitted to Crittenden five information requests relating to both facilities. The first request was general in nature and was entitled, "Maximization/Casuals in Lieu." It requested the weekly flash reports and daily manual distribution volume[28] for the past 6 months, and the office complement[29] as of January and October 2004. Crittenden acknowledged receipt of the request and approved it on November 25, 2004.

The other four information requests pertained to Cook, Stands, Fuith, and Shabazz, the limited/light duty letter carriers. Still seeking to determine whether they were being improperly placed in the clerk craft, Marsh requested "daily or weekly hours and duties (broken down by type of duties performed) for" the past month for said employees—essentially the same information previously requested on September 8 and 20. There was

[25] Carlton was referring to Articles 37.1.H and 37.3.A.4. (Tr. 807–809, 833–834.) Those provisions permit the Respondent to effectively change employees regularly scheduled duty assignments by "reposting" their positions. "Reversion" is defined at Article 37.1.G as a "management decision to reduce the number of occupied duty assignment(s) in an established section and/or installation."

[26] Although not fully reflected at item 3 of the minutes, uncontradicted testimony by Rutkowski, Swarthout, and Marsh established that Marsh complained about the difficulty of getting requested information. (Tr. 87, 127, 357, 360, 368, 370–372.)

[27] I based this finding on Swarthout's credible and uncontradicted testimony. (Tr. 131.) Carlton's testimony about their discussion, on the other hand, was general, vague, tended to corroborate most of Swarthout's version of their discussion and, notably, failed to rebut the claim that he threatened to abolish all positions. (Tr. 831–834.) In fact, however, no clerk positions were abolished and reposted. (Tr. 492.)

[28] The daily manual distribution volume shows the volume of mail that is manually sorted by the clerks per day. (Tr. 331.)

[29] An office complement is a monthly report showing the total hiring authorization for each facility and the actual aggregate work force for each facility. (Tr. 331.)

no written acknowledgment that Crittenden received them or that he approved or denied the requests.[30]

On or about December 2, 2004, Marsh received flash reports, but only for the period of August 14 to September 30, and made notations on her copy of the information request. She never received flash reports for the periods of April 21 to August 13 or October 1 to October 24, nor the daily manual distribution volume or the office complement.[31] Marsh also received a handwritten list of duties and a copy of Cook's Employee Everything Report[32] for the period of September 18 to October 14, and Stands' Employee Everything Report for the period of September 7 to October 22. Stands' report contained a handwritten note stating, "automatic clock rings." Regarding Fuith and Shabazz, however, Marsh received handwritten notes indicating the number of hours worked per day or week and the duties performed. [33]

The October 26 information request

On October 26, 2004, Marsh gave Carlton a request for weekly schedules, starting with September 25 to the present,[34] the flash report and mail volume for the week of October 16. Marsh again wrote "casuals in lieu" in the box labeled "Nature of Allegation." This request was a continuation of Marsh's efforts to monitor Respondent's compliance with Article 7 by ensuring that casuals were not being used in lieu of full or part-time employees. Respondent did not provide any of the information Marsh requested on October 26.[35]

The November 4 information request

On November 4, 2004, still seeking to enforce Article 7, Marsh submitted an information request to Sutton for the Form 50s of casuals hired during the past 6 weeks at both facilities. Casuals are restricted by the terms of the collective bargaining agreement to work no more than two 90-day terms per calendar year. The Form 50s, in conjunction with the information Marsh requested on October 26, would have enabled her to determine how many casuals had been hired during the last 90-day term of the year. Sometime in January 2005, Crittenden gave Marsh a single Form 50, for Pamela Taylor. However, Marsh never heard of Pamela Taylor and there is no indication, however, that this single Form 50 was

[30] This finding is based on Marsh's credible and uncontradicted testimony. (GC Exh. 26–30; Tr. 325–333.)

[31] The Respondent produced no documents, in response to the General Counsel's subpoena duces tecum, showing it provided any information in response to the information request. (Tr. 55–56; GC Exh. 6, p. 12, para. 44.)

[32] An Employee Everything Report shows each employee's hours worked and the specific job functions they performed each day. (Jt. Exh. 2-4; Tr. 512.)

[33] Although Crittenden signed and dated the information request forms as either October 21, 25, or 26, he did not give them to her until on or about December 2, 2004. (Tr. 334–338; GC Exh. 49–52.)

[34] Marsh already had earlier reports, while October was the beginning of a 90-day term for casual employment. (Tr. 339, 342.)

[35] This finding is based on Marsh's credible and uncontradicted testimony. (GC Exh. 31; Tr. 342–343.)

produced in response to the November 4 information request or even fell within the 6-week period that Marsh requested.[36]

F. Marsh's Steward Time

Prior to October 25, 2004, the process by which Marsh verbally requested steward time did not work very well.[37] As a result, during steward time on October 25, she submitted written requests for steward time on October 26 and 29. Carlton denied both requests. On October 27 and 28, Marsh took leave without pay to perform administrative duties for the Union. On Marsh's written request for steward time on October 29, Carlton wrote, "time included with the 27 and 28th October." He gave Marsh no other explanation for denying her request.[38]

On November 8, 2004, Marsh submitted a written request to Sutton, her supervisor at the time, for a minimum of 1 hour of steward time on November 9, 10, and 12. On November 9, Marsh gave Sutton another written request for a minimum of 1 hour of steward time on November 16, 17, 18 and 19. Marsh received steward time from 1 to 2:10 p.m. on November 9 and 12, and 45 minutes on November 18, but none on the other dates requested. As a result, sometime prior to December 3, Marsh met with Sutton and filed a grievance. However, Marsh ultimately decided to defer the issue to the next district labor-management meeting on December 3.[39]

According to Marsh's Employee Everything Reports, she received steward time on various days and times after September 27, 2004. On September 28, she took steward time between 9:10 a.m. to 10:30 a.m. She took about the same amount of time on September 29 and 30. During October, however, Marsh received steward time at around 11 a.m. on four occasions. During November and December, she received steward time on ten occasions and, generally, at 1 p.m. or later.[40]

Changes to Marsh's job assignments

On September 27, 2004, Marsh's first workday after the September 23 meeting, she had just finished processing first-class mail and was about to take steward time. However, at that point, Dwayne Adams approached her and told her that she needed to stay there and

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[36] The Respondent produced no documents, in response to the General Counsel's subpoena duces tecum, to show it ever responded to the information request. Since the Respondent failed to clarify Marsh's confusion over the relevancy of the record relating to Pamela Taylor—Marsh never heard of her—I did not find that it was a response to the request. (Tr. 55-56, 343-344; GC Exh. 6, p. 13, para. 46; GC Exh. 33.)

[37] Marsh asserted that her verbal requests were ignored up to that point. I did not credit that vague assertion. She provided no dates or names and, more importantly, it is hard to imagine that Marsh would, after one such instance, fail to insist on responses to her verbal requests.

[38] This finding is based on the documentary evidence and Marsh's uncontradicted testimony. (Tr. 410–414; GC Exhs. 47–48.)

[39] This finding is based on Marsh's credible and uncontradicted testimony, as well as the Employee Everything Reports. (Tr. 414–417, 476–477; GC Exhs. 59–60; Jt. Exh. 2.) Carlton did not address these dates in his testimony and Sutton did not testify. Beverly's testimony only addressed Marsh's specific request for steward time between 9:30 and 10:30 a.m. The ignored written requests, however, did not refer to a specific timeframe. (Tr. 707–708, 733–734.)

[40] This finding is based on Marsh's Employee Everything Reports. Jt. Exh. 2.

process the misrouted mail.[41] Processing misrouted mail, which is also referred to as "hot" mail, was a task that Marsh had not been asked to do regularly. Marsh did not, however, tell Adams or Carlton, who was standing about 5 feet away from Adams, she needed the time to do union-related work.[42] Nor did Marsh question why she was being asked to process misrouted mail.[43] She proceeded to process misrouted mail and finished at 10:30 a.m.

Marsh subsequently complained that, after September 23, 2004, she was frequently assigned to process misrouted mail, also referred as "hot mail" distribution, which prevented her from performing steward duties between 9:30 and 10:30 a.m. That complaint was baseless, as she was not usually performing steward duties at that time. Notwithstanding Marsh's contentions on September 23, the overwhelming majority of the time, she was sorting mail at or around 9:30 and for a period of time thereafter. In fact, Marsh's duties essentially remained the same as before—assorted as to scope and variable as to time. According to Marsh's Employee Everything Reports, during the period of January 1–September 22, 2004, Marsh was performing the following activities at or around 9:30 a.m.: sorting regular and misrouted mail (code 240) on 135 occasions; box section maintenance (code 558) on 27 occasions; steward duties (608) on 25 occasions; sorting post office box mail (code 769) on 24 occasions; providing window clerk relief (code 355) on 4 occasions; and on 1 occasion, performed unspecified code 905 duties.[44] During the period of September 24–December 31, 2004, Marsh was performing the following activities at or around 9:30 a.m. and for a period of time thereafter: sorting mail (code 240) on 65 occasions; performing box section maintenance (code 558) on 5 occasions; providing window clerk relief (code 355) on 4 occasions; and steward duties (code 608) on 3 occasions. Those three occasions were September 28, 29, and 30, 2004.[45] Furthermore, on many occasions prior to and after September 23, Marsh was able to take steward time at other times of the workday.[46]

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[41] The Respondent stipulated that Adams was a supervisor. (Tr. 29; GC Exh. 2.)

[42] Marsh did not testify as to the specific time that she completed her work before being approached by Adams. Even assuming that it occurred at or around 9:30 a.m., I find that she did not request steward time that day. Although she asserted during a contentious stretch of cross-examination that she made such a request, her earlier, more spontaneous response during direct examination by the General Counsel indicated that she did not. (Tr. 377–379, 388, 535–538.)

[43] It is not clear that Carlton was in the vicinity in order to monitor the exchange between Adams and Marsh, since he was known to follow supervisors around. (Tr. 805–806, 866–867.)

[44] I did not credit Marsh's testimony that she rarely sorted misrouted mail prior to September 23 because the Employee Everything Reports overwhelmingly disprove her contention that she usually did steward work between 9:30 and 10:30 a.m. (Tr.378–379, 385–386; Jt. Exh. 2.) In any event, Marsh's contention about sorting misrouted mail is insignificant since, just like sorting regular mail, it falls under code 240—the activity that Marsh was engaged in at, around and after 9:30 a.m. on most workdays.

[45] The tabulation of dates relating to steward activities includes dates when Marsh started that activity within a few minutes before or after 9:30 a.m., since she rarely started any activity at exactly that time. Jt. Exh. 2.

[46] See, for example, February 27, March 16, April 29, May 12, June 29, July 21, October 6, November 9, November 12, November 18, December 1, December 7, December 14, and December 28. *Id.*

F. Marsh's Overtime Opportunities

Marsh's regular shift is Monday through Friday, 5 a.m. to 1:30 p.m. Because she requested it, Marsh performed preshift overtime work at various times prior to September 23, 2004.[47] At Carlton's request, on or about June 17, 2004, Marsh began putting in regular preshift overtime in order to catch up on her box section work.[48] Marsh also frequently worked an additional hour of overtime at the end of her shift.[49] At some point between September 23 and October 8, however, Carlton told Beverly to remove Marsh's preshift overtime authorization. As a result, from October 9 to December 6, Marsh regularly started her shift at 5 a.m. Carlton subsequently told Marsh, at the December 3 district labor-management meeting, her preshift overtime authorization was taken away because he had been informed she was doing union work during that time. Marsh denied the allegation.[50]

On December 7, 2004, Carlton directed Marsh to perform preshift overtime work in order to catch up on her post office box section work (box section work). On January 11, 2005, Beverly told Marsh that Carlton only authorized preshift overtime to enable her to catch up, but "he didn't mean for it to be forever."[51] At the time, however, Marsh was not caught up on her box section work.[52] Marsh resumed her regular shift on January 22.[53] That continued until Carlton was reassigned to another detail on July 12, 2005.[54]

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[47] Marsh did not, however, request postshift overtime. (Tr. 392–393, 398; GC Exh. 13c, 13e; Jt. Exh. 2.)

[48] The Respondent's contention that Marsh incorrectly attributed her box section work to code 769 instead of 558 is insignificant, since both codes related to box section work. (Tr. 380,514, 836; Jt. Ex. 2.)

[49] The General Counsel does not allege that Marsh was denied postshift overtime.

[50] I based this finding on Carlton's testimony that he told Marsh, at the December 3 meeting, her preshift overtime was taken away because an unidentified employee told him she was doing union work instead of box section work. (Tr. 393–395. 820.) As such, I did not credit Beverly's testimony that Marsh's overtime was taken away because it may have impacted on her ability to provide window clerk relief toward the end of her shift. (Tr. 698–702; R. Exh. 17.) There was no connection between the two functions. First, on September 9, the day of the negative mystery shopper evaluation, Marsh provided window relief from 11:01 a.m. to 1:03 p.m. Second, although the results of the mystery shopper evaluation would have been received by Carlton within several days, Marsh did not resume her regular schedule until 1 month later—October 9. (Tr. 697–98, 840–841; Jt. Exh. 2.)

[51] Beverly credibly testified she instructed Marsh, sometime in the middle or end of January, to come in at 5 a.m. (Tr. 705.)

[52] There was no documentary proof as to the status of the facility's box section applications, but the Respondent failed to rebut Marsh's credible assertion that she was behind in that work. (Tr. 397, 632–633.)

[53] The General Counsel noted that other employees, such as Sandy Blades, another clerk, continued to receive preshift overtime. This fact is insignificant in the absence of other information regarding the circumstances of Blades' assignments. (GC Exh. 56.)

[54] The Employee Everything Reports essentially corroborate Marsh's testimony on this point. Jt. Exh. 2.

G. The Threat to Remove Marsh's Desk

Since 2001, Marsh has performed her box section maintenance work at the New Boundary Street facility on a desk adjacent to the post office boxes. At that desk, she uses a computer to process the opening and closing of post office boxes. Since that computer takes up most of the desk surface, Marsh uses a nearby wooden desk to spread out her paperwork, and store her food and union records.

Shortly before the December 3, 2004 district labor-management meeting, Marsh was sitting at her desk speaking with Sutton. Carlton approached them and asked Marsh if she received responses to her information requests. Marsh replied that she had not and was in the process of submitting a grievance to Sutton. Carlton responded by asking, "You're filing a grievance?" When Marsh said yes, Carlton told Sutton he and Marsh should conduct their business in an enclosed office to avoid interruption. Sutton responded that "this is her office." The next day, Adams, as acting supervisor, told Marsh she needed to remove her things from the desk because Carlton said they were going to use it somewhere else. Marsh removed her things, but the desk was never removed.[55]

H. December 3 Labor-Management Meeting

On December 1, 2004, the parties agreed to hold a district labor-management meeting at the Monticello Station facility on December 3. Proposed agendas were prepared and exchanged on December 2. The proposed agenda included items of interest to the Union regarding the Williamsburg, Newport News, Hampton, and Yorktown post offices.[56] The Williamsburg portion of the agenda included the following items:

Annual Leave
Scheme Training – over 1000 items on 23185 scheme
Not getting consistent training
Some with bid jobs with scheme have not learned the scheme for 3 years
Assigning schemes to clerks who will not be using it 30 hours an AP
Requiring clerks to learn two schemes even though they are assigned to

[55] Testimony by both Marsh and Carlton on this issue was less than credible. Marsh's testimony is inconsistent to the extent that she asserts Adams told her to remove her things from the desk in early December 2004, but later changed the date to late October 2004. She also testified that she did not complain, which I find unlikely, since the desk was not removed. (Tr. 403–406, 506–508.) Carlton's testimony, on the other hand, was inconsistent and contradicted by Beverly in one important respect. Carlton testified that he wanted to take away Marsh's desk because the storage of food at her desk was an OSHA violation. He also testified that a visiting, unspecified postmaster liked the desks at the North Boundary facility and he offered her Marsh's desk because it was the "nicest one." (Tr. 819–820, 823–825.) He also asserted that he offered Marsh another supervisor's desk. (Tr. 883.) First, Carlton's concern for an OSHA violation would not be resolved by providing Marsh with another desk where she could continue to store food. Second, Beverly confirmed that Carlton was concerned about Marsh's storage of food in the desk, but added that he also expressed concern she was using it to store her union paperwork. (Tr. 729–730.)

[56] Marsh prepared her portion of the agenda and submitted it to Pamela Richardson, the Union's national business agent. GC Exh. 10. Richardson included a synopsis of that information and included it on the agenda she submitted to the Respondent. (GC Exh. 11.)

one station (only some of the clerks are required to throw at both 23185 and 23188)
Holiday Work
Does not put up the volunteer list ahead of time and
Drafts non volunteers to work
Nixie position
PAA
Requests for information
Requests ignored, refused or unusually long delays (months)
Union time
Failure to give union time on clock when requested. Sometimes get it but then am interrupted after only a few minutes
Threats
Threats of firing, discipline, abolishment of jobs
Harassment
Custodial Position
Residual vacancy should have been filled by senior PTF when Art 12 was lifted
APC – proper staffing (clerk position)
Refusing annual leave when no one off and we have in our local that 3 can be off
Closing the whole month of December to leave requests (this is not our local)
Arbitration Award – monetary not paid

The December 3 meeting was attended by Charles McDonough, the Respondent's labor relations specialist, Carlton, postmasters of the other facilities, Butler, Sutton, and Beverly. The Union was represented by Pamela Richardson, the APWU's national business agent, Marsh, Swarthout, and APWU representatives from other post offices within the district. After addressing general issues, the parties turned to the Williamsburg post office's portion of the agenda. At that point, the meeting became contentious—mainly between Carlton and Marsh.[57]

Marsh explained that the Respondent failed to comply with her information requests. Carlton expressed ignorance as to the relevance of the information sought and the 7-day time limit to provide information. This was not a credible assertion by Carlton, as McDonough, spoke with him the day before about his obligations to the Union.[58] In any event, Marsh referred Carlton to the "nature of the allegation" box in the information requests. McDonough agreed that the reference indicated the relevance of the requests.[59] Beverly asserted, however, that Marsh complicated her requests by seeking information regarding Monticello Station facility employees, as well as those at the North Boundary Street facility. As a result, she stated she would not always provide a complete response because she considered it beyond her scope. Beverly would produce only that information that concerned employees working at the North Boundary Street facility. This was not a credible explanation for the delay, since neither Beverly nor any other representative of the Respondent ever expressed such a concern to Marsh before that day.

[57] This finding is based on Swarthout's credible description of the meeting. (Tr. 135.)

[58] This finding is based on McDonough's testimony that he reviewed the JCAM with Carlton, Butler, and Crittenden and gave them copies of it prior to the December 3 meeting. (Tr. 57–59, 751–759, 785–786, 816; R. Exh. 13–14.)

[59] This finding is based on the credible testimony of Marsh, who was not rebutted by McDonough on this point. (Tr. 422–423.)

No resolution was reached at the meeting regarding Marsh's outstanding information requests.[60] McDonough and Richardson did agree, however, to investigate the issues to determine why supervisors were not aware of their obligations and to clarify what needed to be done.[61] The parties also agreed that Marsh would submit all future information requests to Crittenden, who would keep a log of, and coordinate responses to, the requests.[62]

Marsh also accused Carlton of harassing and retaliating against her because of her union activities by denying her overtime, instructing her not to use the desk, threatening to abolish jobs, assigning her extra duties, and denying her the steward time agreed to on September 23.[63] Marsh and Swarthout also confronted Carlton about his September 23 statement to Swarthout threatening to abolish positions.[64] Carlton responded that Marsh was merely being asked to do work within the scope of her duties and was needed at the customer service window for longer hours. He also asserted that employees told him that Marsh did union work at her desk in the mornings and that, in any event, the desk did not belong to her. Beverly added that she personally saw Marsh doing union work between 4 and 5 a.m. and asserted that Marsh was on steward time "all of the time." Marsh denied the accusations.[65] Regarding the threat to abolish jobs, Carlton did not deny the statement, but explained he was reassessing his operational needs under Article 3. The Respondent agreed that Marsh would receive steward time pursuant to requests on Form 7020. No resolutions were reached, however, regarding the assignment of overtime to Marsh and her use of the desk.[66]

After the Williamsburg post office agenda items were discussed, Carlton, Butler, and Swarthout left the room. Outside the conference room, Carlton and Butler were speaking as Swarthout passed them. At that point, referring to Marsh, Carlton told Swarthout, "she'll get that information, but it's going to be slow in coming and it's going to cost her." Carlton also reiterated what he told Marsh at the meeting—that her actions would force him to repost

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[60] Beverly and Carlton testified that the parties agreed Marsh would resubmit outstanding information requests to Crittenden. (Tr. 709–710, 822.) Richardson and Marsh testified there was no such agreement—only one to submit future requests to Crittenden. (Tr. 217, 431.) McDonough, also a credible witness, could not recall, but conceded his notes would have reflected an agreement to have Marsh resubmit her requests. They did not. His only notation regarding information requests was that such requests would go through Crittenden. (Tr. 784; GC Exh. 11a.)

[61] This finding is based on the credible testimony of Richardson, which was not refuted by McDonough in his subsequent testimony concerning the meeting. (Tr. 211, 214.)

[62] The log, which shows 13 entries, covers the time period from December 8, 2004, to February 25, 2005. (GC Exh. 13d.) It was the only log maintained by Crittenden. (Tr. 817, 910.)

[63] This finding is based on the fairly consistent testimony of Marsh and Beverly. (Tr. 136–138, 218–221, 421, 712; GC Exh. 12.)

[64] None of the Respondent's representatives made any mention at the meeting about the mystery shopper program that Carlton testified about or the need of another postmaster for Marsh's desk.

[65] This was not a credible assertion, since neither Beverly, Carlton, nor anyone else on behalf of the Respondent, ever mentioned this to Marsh before that day. (Tr. 713, 738, 896–898.)

[66] This finding is based on the consistent testimony of Marsh and Carlton. (Tr. 137–139, 222–225, 286, 429–431, 836.)

positions. Swarthout said he understood, but told Carlton to settle down and he and Carlton would work it out.[67]

I. The 2005 Information Requests

During the 9-month period following the December 3, 2004 meeting, Marsh did not have any problem getting information.[68] An information request log maintained by Crittenden indicated that one request, dated December 8, sought the same information referred to in the October 26 information request (weekly schedules from September 24 to the present and Hours Analysis Reports for both facilities).[69]

During the period of September 7 to December 17, 2005, however, the Union again encountered difficulty obtaining responses to information requests. [70] On September 7, 2005, Marsh was preparing a maximization grievance pursuant to Article 7. In that regard, she provided Crittenden with an information request for the weekly hours of Fuith and Shabazz, and all Form 1723s for Dwayne Adams, Theresa Adams, and Jose Soto.[71] Crittenden acknowledged receipt of the information request later that week.[72]

The minutes of the September 14, 2005 local labor-management meeting reflect that Marsh again complained, but this time to Dennis Johnson, the officer-in-charge at the time, about the lack of information:

> A request for information has been sent to [Crittenden] many times and not been provided to the Union. Vicki has requested the rehab hours and 23188 clerk scheduled. Shirley Shabazz (23185) and Madonna Stands (23188 MPOO Office) are on automatic clock rings. All bargaining unit employees are required to use the time clock (including 204Bs.) Vicki requested this information for these two employees, plus rehab Laurie Fuith (23188) to determine what functions they are performing. Dennis has promised that the Monticello Station will send a copy of their schedule to Vicki each week.

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[67] I based this finding on portions of consistent testimony by Swarthout and Carlton. Both testified that the discussion took place. Carlton confirmed the post-meeting discussion with Swarthout and recalled the reposting comment, but did not deny making the statement regarding Marsh's information requests. Swarthout credibly testified regarding Carlton's threat to provide the information slowly, but was on his way to the restroom and could not recall anything else discussed. (Tr. 140–142, 834–835.) Butler only testified regarding his discussion with Carlton and made no mention of a conversation with Swarthout. (Tr. 891.)

[68] McDonough's testimony regarding Marsh's satisfaction with the processing of information requests after December 3, including some longstanding requests going back as far as 2000, was not refuted. (Tr. 764–766; R. Ex. 15.)

[69] GC Ex. 13(d).

[70] The Respondent concedes this allegation, but partially attributes the 3-month delay to the "enormity" of the information requested, the format in which Marsh requested it and "temporary confusion" created by Crittenden's transfer in mid-September 2005. (R. Br. at 57–58.)

[71] Theresa Adams and Jose Soto are part-time flexible employees who were assigned to work at the Monticello facility. (Tr. 450.) All three served as acting supervisors during part of the year and Marsh needed to distinguish their time in that capacity as opposed to clerk duties. (Tr. 453.)

[72] GC Exh. 35, 37.

On September 20, 2005, Marsh submitted an information request to Crittenden for a breakdown of hours for all limited/light duty employees. The request related to a maximization grievance, which she filed the same day, requesting that part-time flexible employees working more than 40 hours per week be converted to full-time employees pursuant to Article 7. Marsh noted on the form that she had not yet received a breakdown of hours for the limited/light duty employees. Marsh followed-up over the course of the next month with verbal requests for the same information to three supervisors—Allison Rogers, George Sutton, and Dennis Johnson.[73]

On September 26, 2005, Marsh submitted a written information request to Rogers for additional documents relating to the September 20 maximization grievance. She requested Employee Everything Reports for 2005 in a compact disc format. Rogers provided her with the compact disc format, but it was password-protected and inaccessible. Marsh agreed, however, to research how to copy the information onto a compact disc and then resubmit the request. On October 6, Marsh resubmitted the request for the Employee Everything Reports, which amounted to more than 1000 pages, to be copied onto a compact disc. The request referred Rogers to Paula Armatis, a labor relations specialist who knew how to copy voluminous information onto a compact disc. Instead of contacting Armatis, however, Rogers denied the request on the ground that hard copies were available.

On October 14, 2005, Marsh resubmitted a written information request for the 2005 Employee Everything Reports in a compact disc format. This time, however, she submitted the request to Sutton because Rogers was out of the office. In late October, Sutton informed Marsh he contacted Armatis and determined how to copy the information onto a compact disc. On October 24, still not having received the compact disc, Marsh submitted another written request for the information. This time the information request was submitted to Betty Tomes.

On October 24, 2005, Marsh also submitted to Tomes a written information request form for weekly Hours Analysis Reports for Fuith and Shabazz and a breakdown of hours for limited/light duty carriers, among other things. On December 1, Marsh received the weekly hours for Fuith and Shabazz. She also received a breakdown of hours for all limited/light duty employees sometime in November or December of 2005.[74]

On December 2, 2005, Marsh met with McDonough to discuss the September 20 maximization grievance. McDonough said he needed the starting and ending times of the part-time employees involved. Marsh did not, however, have the supporting documentation necessary to provide that information because she had not yet received the 2005 Employee Everything Reports. As a result, they rescheduled the meeting to December 19.

On December 18, 2005, Carlton provided Marsh with a compact disc containing over 4000 pages of 2005 Employee Everything Reports for all Williamsburg employees. It included the reports for the letter carriers,[75] as well as the clerks. He also asked whether she still needed the Form 1723s. Marsh said she did not need them any longer because she had the Employee Everything Reports. Those reports included the dates and times that Dwayne

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[73] There is no dispute as to the accuracy of these minutes. (GC Exh. 35, 37–38; GC Exh. 45, page 2; Tr. 459.)

[74] Findings relating to Marsh's actions in September to December 2005 are based on her credible and uncontradicted testimony and corroborated by the forms. (Tr. 459–469, 472–475; GC Exh. 39–42.)

[75] Letter carriers are not represented by the APWU. Jt. Exh. 1, p. 1; Tr. 309.

Adams, Theresa Adams, and Jose Soto spent on specific tasks, including supervisory duties. As a result, Marsh never received Form 1723s.[76] Such forms did, in fact, exist for Dwayne Adams and Theresa Adams, but not Soto.[77]

III. Legal Analysis

A. The 8(a)(5) and (1) Allegations

The General Counsel alleges that the Respondent violated Section 8(a)(5) of the Act by (1) failing to provide and/or failing to provide in a timely manner responses to information requests that the Union needed to monitor the collective-bargaining agreement;[78] and (2) unreasonably denying Marsh steward time in violation of the parties September 23 agreement and the JCAM.

The Respondent contends that the parties, on December 3, 2004, resolved their dispute regarding the 2004 information requests. It does not deny it delayed in responding to the 2005 information requests, but partially attributes those delays to the "enormity" of the information requested, the format in which it was requested, and the "temporary confusion" created by Crittenden's transfer in mid-September 2005. The Respondent also asserts that the Union was not prejudiced because it provided the Union with an extension of time to file grievances. With respect to the denial of steward time, the Respondent contends that it never agreed to provide Marsh with a specific time to perform steward duties and, in any event, the deprivation of steward time "was of too short a duration and too de minimis to rise to the level of a unilateral change.[79]

1. The information requests

If an employer declines to supply relevant information on the ground it would be unduly burdensome to do so, the employer must not only timely raise this objection with the union, but also must substantiate its defense. *Pulaski Construction Co.,* 345 NLRB No. 66 at 12 (2005). Furthermore, an employer has an obligation to furnish requested relevant information without undue delay. *Woodland Clinic*, 331 NLRB 735, 736 (2000) *Barclay Caterers*, 308 NLRB 1025, 1037 (1992). An unreasonable delay in furnishing information relevant to the Union's role as the employees' bargaining representative is as much a violation of Section 8(a)(5) of the Act as an outright refusal to furnish the information. *Amersig. Graphics, Inc*., 334 NLRB 880, 885 (2001). In assessing the reasonableness of a delay, however, relevant considerations include the complexity, extent of the information sought, availability, and difficulty in retrieving requested information. *West Penn Power Co*., 339 NLRB 585 (2003); *House of the Good Samaritan*, 319 NLRB 392 (1995). "Indeed, it is well established that the duty to furnish requested information cannot be defined in terms of a per se rule. What is required is a reasonable good faith effort to

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[76] Essentially, a Form 1723 would provide the start and end dates of a supervisory detail, while an Employee Everything Report indicates when an employee is working at a higher pay rate. An Employee Everything Report thus contains the same information, but requires more time in order to evaluate the merits of the grievance or potential grievance. (Tr. 453, 501–503. GC Exh. 36.)

[77] Marsh confirmed Carlton's testimony that she no longer needed the Form 1723s. (Tr. 469–473, 861–862.)

[78] See paras. 12–27 of the amended consolidated complaint; GC Br. at 36–46.

[79] R. Br. at 35–40, 57–62.

respond to the request as promptly as circumstances allow." *West Penn Power Co.*, 339 NLRB 585 (2003), citing *Good Life Beverage Co.*, 312 NLRB 1060, 1062 fn. 9 (1993).

Marsh submitted the information requests at issue during two periods of time: July 26 to November 4, 2004, and September 7 to October 24, 2005. The Respondent produced only a partial response to Marsh's 2004 requests for the following: flash reports requested on September 7 and 21, and October 21 and 26; work limitations, Form 50s and offer of work duties for Cook, Stands, Shabazz, and Fuith requested on September 8 and 20; staffing study and work requirements for custodians requested on September 21; Form 50s for casual and limited/light duty employees requested on September 21 and November 4; daily manual distribution volume and the office complement requested on October 21; and weekly schedules and mail volume requested on October 26. The Respondent also failed to produce Form 1723s for Dwayne and Theresa Adams and Soto requested on September 7, 2005, and between September 23 and October 24, 2005. On December 18, 2005, however, Marsh told Carlton that the Employee Everything Reports he gave her that day would suffice in lieu of the Form 1723s.

The Respondent's production, on December 18, 2005, of the Employee Everything Reports satisfied Marsh's request for the Form 1723s. By telling Carlton she no longer needed the Form 1723s, Marsh expressly waived her statutory right to receive such information. *E-Systems, Inc.*, 318 NLRB 1009, 1012 (1995); *NLRB v. New York Telephone Co.*, 930 F.2d 1009, 1011 (2d. Cir. 1991); *Chesapeake & Potomac Telephone Co. v. NLRB*, 687 F.2d 633, 636 (2d Cir. 1982). Carlton's production of the Employee Everything Reports, however, neither satisfied nor addressed Marsh's requests for flash reports, work limitations, Form 50s, offers of work duties, staffing studies, work requirements for custodians, daily manual distribution volume, the office complement, or weekly schedules. Simply because those items were not discussed at that time does not mean that Marsh waived her right to their production. It is well settled that a waiver of a statutory right will not be lightly inferred and must be expressed in clear and unmistakable language. *East Kentucky Paving Corp.,* 293 NLRB 1132 (1989).

The Respondent's failure to fully respond to Marsh's information requests was unreasonable. It never advised her that her requests were unduly burdensome, nor did its representatives speak with her about narrowing the requests. Furthermore, the Respondent did not provide any proof at the hearing as to the time and resources necessary to comply with Marsh's requests. *Goodyear Atomic Corp.*, 266 NLRB 890, 891 (1983), enfd. 738 F.2d 155 (6th Cir. 1984).

The Respondent also delayed in supplying requested information. On December 2, 2004, 1 day before the district labor-management meeting, the Respondent provided the following information after delays ranging from 5 to 17 weeks: aggregate Hours Analysis Reports for both facilities (17 weeks); flash reports and Hours Analysis Reports for Cook, Stands, Shabazz and Fuith (11-1/2 weeks); weekly hours and duties for Fuith and Shabazz (11 weeks); weekly work hours and duties for Cook, Stands, Shabazz and Fuith (5 weeks).

The 2005 delays consisted of 11 weeks to provide the Employee Everything Reports (September 26–December 18) and the weekly hours and duties for Fuith and Shabazz (September 7, 2005—December 1), and 9-1/2 weeks to provide a breakdown of hours for limited/light duty carriers assigned to clerk duties (September 20—December 1). The Employee Everything Reports arrived the day before Marsh was to meet with McDonough to discuss a grievance. As a result, the grievance meeting had to be rescheduled in order for Marsh to review the information.

Under certain circumstances, a delay can be reasonable. Simply showing that disclosure may impose strains on the Respondent's personnel, however, does not outweigh the Union's right to inspect the information requested. *H.J. Scheirich Company*, 300 NLRB 687, 689 (1990). More is needed. In *Union Carbide Corp.,* 275 NLRB 197 (1985), the employer began, almost immediately upon receiving the information request, on a difficult, time consuming, and expensive task of gathering the relevant data. The project lasted continuously for about 10 months when all the data was finally compiled and approved for release. Since there was no showing that the respondent's procedures for handling the information requests were unreasonable or that it could have expedited the production some other way, the Board found that no Section 8(a)(5) violation occurred. *Id. at 201.*

The Respondent's reliance on *Union Carbide Corp.,* however, is unavailing, as it has not offered a reasonable justification for the delays in providing the requested information. The Respondent failed to demonstrate the requested information was not readily available or that it began preparing the information for dissemination within a reasonable time after receiving the request. The Respondent also failed to show that the collection of the information was difficult, time consuming, or expensive. *See Pan American Grain*, 343 NLRB No. 47 (2004), enfd. in relevant part, 432 F.3d 69 (1st Cir. 2005). Under the circumstances, the Respondent's failure and/or delay in providing the requested information in 2004 and 2005 violated Section 8(a)(5) and (1) of the Act.

2. Denial of steward time

The General Counsel also contends that the Respondent's denial of Marsh's requests for steward time on October 26 and 29, and November 10, 16, 17, and 19, 2004 breached the terms of the collective-bargaining agreement, JCAM and September 23 agreement, and thus violated Section 8(a)(5). The Respondent contends the denial was justified due to workflow needs and, in any event, amounted at most to a de minimus change or breach of the collective-bargaining agreement that did not rise to the level of a Section 8(a)(5) violation.

Section 8(a)(5) of the Act requires an employer to provide its employees' representative with notice and an opportunity to bargain before instituting changes in any matter that constitutes a mandatory bargaining subject. *Ivy Steel & Wire Inc.,* 346 NLRB No. 41 (2006). The change unilaterally imposed must be a material, substantial, and significant one. *Indian River Memorial Hospital*, 340 NLRB 467 (2003), citing *Peerless Food Products, Inc.,* 236 NLRB 161 (1978). Not every breach of a collective-bargaining agreement, however, rises to the level of a Section 8(a)(5) violation. *Howell Insulation Co.,* 311 NLRB 1355 (1993). To constitute such a violation, the breach must be more than an isolated instance by someone other than a supervisor at the lowest level of the grievance chain. *Chatham Manufacturing Company,* 221 NLRB 760, 767 (1975). It must be to such an extent that it goes to the heart of the collective-bargaining relationship. *See Oak Cliff-Golman Baking Co.,* 207 NLRB 1063, 1064 (1973), enfd. 505 F.2d 1302 (5th Cir. 1974), cert. denied 423 U.S. 826 (1975).

The crux of our analysis lies with the collective-bargaining agreement. With respect to the granting of steward time, the JCAM was merely a device intended to ensure the smooth processing of such requests, while the September 23 agreement dealt with a way of affording Marsh steward time to which she was entitled under the collective-bargaining agreement. The collective-bargaining agreement prohibits the Respondent from unreasonably denying steward time requests. Carlton denied, without explanation, Marsh's request for steward time on four occasions—October 26 and November 10, 16, 17, and 19. On another occasion, October 29, Carlton denied a request for steward time on the ground that the request was somehow subsumed by Marsh's official leave on October 27 and 28. All of these denials were

unreasonable and thus breached the collective-bargaining agreement. Unlike the September 23 meeting, where it was generally noted that workflow prevented Marsh from taking steward time, there was no proof in the record that workflow reasons were the cause of the denial of steward time in October and November.

The issue remains, however, whether such breaches constituted a violation of Section 8(a)(5) or were de minimus breaches of the collective-bargaining agreement. In determining whether certain conduct is de minimus, the Board takes into consideration the number of violations, their severity, the extent of dissemination, the size of the unit, and other relevant factors. *Waste Automation*, 314 NLRB 376 (1994). The record indicates Marsh was receiving steward time on various days and times after the September 23 meeting. Prior to October 25, the process for verbally requesting steward did not run smoothly, so Marsh began submitting written requests on October 25. Carlton's denial of her request for steward time on October 29 indicated he recognized her right to take steward time, but erroneously determined that her request was satisfied during her official time off on October 27 and 28. Marsh did, in fact, receive steward time on other days in October and November. In essence, the six instances in which she was denied steward time during that limited period of time were isolated and not of sufficient duration as to go to the heart of the collective-bargaining relationship. Under the circumstances, the Respondent's unreasonable denial of steward time to Marsh on six occasions did not rise to the level of a Section 8(a)(5).

B. The 8(a)(1) Allegations

The General Counsel alleges that the Respondent violated Section 8(a)(1) of the Act on two occasions. The first instance occurred on September 23, 2004, when Carlton told Marsh that the gloves were off and he threatened to abolish positions. The second incident occurred on December 3, 2004, when Carlton told Swarthout that Marsh would get the information requested, but it would be slow in coming and it would cost her. The Respondent denies Carlton made the December 3 statement, but concedes the September 23 statement. It does contend, however, that Carlton was simply "restating his right to exercise his managerial prerogative in the face of steward Marsh's impending attempt to enforce the CBA" and, in any event, he never followed through on the threat.[80]

An employer commits an unfair labor practice when it "interfere[s] with, restrain[s], or coerce[s] employees" who are exercising the rights guaranteed by Section 7. It is "well settled that the test of interference, restraint, and coercion under Section 8(a)(1) of the Act does not turn on the employer's motive or on whether the coercion succeeded or failed. *American Tissue Corp.,* 336 NLRB 435, 441 (2001). The test is whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act." *Philips Petroleum Co.,* 339 NLRB 916 (2003)

Swarthout's credible and uncontradicted testimony established that Carlton conveyed two threats to him. While Carlton's statement after the September 23 labor-management meeting that the "gloves are off" simply characterized the conduct of the meeting, his threat to abolish jobs was significant. The statement followed an extremely contentious meeting between Carlton and Marsh in which she advocated several issues: the Respondent's failure to respond to her information requests; the Respondent's use of casual, limited/light duty employees; the maximization or conversion of part-time flexible employees to full-time employees; and her steward time.

[80] GC Br. at 47–49; R. Br. at 40–41, 55–56.

Carlton's second statement came shortly after the December 3 district labor-management meeting during which Marsh and Carlton argued about Marsh's outstanding information requests, Carlton's threat to repost jobs, and her deprivation of steward time, overtime, and the use of her desk. Once again directing his anger at Swarthout, but referring to Marsh, he said: "she'll get that information, but it's going to be slow in coming and it's going to cost her."

The Respondent's reliance on *New Process Gear, Div of Chrysler Corp.,* 249 NLRB 1102 (1980), is unavailable. In that case, a foreman and a union representative engaged in an argument over the representative's presence in the foreman's department. The foreman told the union representative to leave the work area. The union representative was not, however, threatened with any disciplinary or other retaliatory action. Nor did he actually leave the work area. As a result the Board did not find a Section 8(a)(1) violation. *Id. a*t 1107. Here, on the other hand, Carlton threatened that Marsh's insistence on enforcing the collective-bargaining agreement would "cost" her and lead to the abolition of jobs. Both remarks could be reasonably seen as threatening to retaliate against the Union; the "cost" remark could also be seen as a personal threat against Marsh. Under the circumstances, Carlton's threats of September 23 and December 3 constituted Section 8(a)(1) violations.

C. The 8(a)(3) Allegations

The General Counsel alleges that the Respondent violated Section 8(a)(3) and (1) of the Act by: (1) increasing her job duties and changing the requirements of her work assignments; (2) denying her overtime before the start of her shift; and (3) by directing her to stop using a desk. The Respondent denies that it increased her job duties and changed her work assignments, denied her overtime, or directed her to stop using the desk. [81]

To prove a violation of Section 8(a)(3), the General Counsel must first show, by a preponderance of the evidence, that the employee's protected conduct was a substantial or motivating factor in the employer's adverse action. *Wright Line, 251 NLRB 1083 (1980)* The General Counsel must establish the employee engaged in union activity, the employer was aware of that activity, and had animus toward the employee's protected conduct. *Waste Management of Arizona, Inc. 345 NLRB No. 114 (2005).* Proof of an employer's animus may be based on circumstantial evidence, such as the employer's contemporaneous commission of other unfair labor practices. *Waste Management of Arizona, Inc., 345 NLRB No. 114 (2005).* The Board has long held that, where adverse action occurs shortly after an employee has engaged in protected activity, an inference of unlawful motive is raised. *See Postal Service, 345 NLRB No. 26 (2005),* citing *McClendon Electrical Services, 340 NLRB No. 73 at fn. 6 (2003).* The burden of persuasion then shifts to the employer to "demonstrate that the same action would have taken place even in the absence of the protected conduct." *Septix Waste, Inc. 346 NLRB No. 50 (2006).*

There is no doubt that Marsh engaged in union activity, the Respondent's supervisory staff was well aware of that activity, and that Carlton, as the top operational supervisor at the Williamsburg post office, exhibited animus toward several of Marsh's attempts to enforce the terms of the collective-bargaining agreement. Marsh was the facility's chief shop steward, confronted Carlton on several occasions, and filed several grievances alleging violations of the Act by the Respondent. The more difficult questions are whether the Respondent's actions

[81] GC Br. at 52–62; R. Br. at 44–55.

adversely impacted Marsh and whether her protected conduct was a substantial or motivating factor in such actions.

1. The change in work assignments

On some occasions after September 23, 2004, Marsh was assigned to process misrouted or "hot case" mail after she finished processing the first-class mail. The requirement that she perform such work during the timeframe of 9:30 to 10:30 a.m., however, did not adversely impact her since she continued to perform an assortment of activities during that timeframe. Those activities, which Marsh also performed during that timeframe prior to September 23, included (in descending order as to frequency) sorting regular and misrouted mail, box section maintenance, steward duties, sorting post office box mail, and window clerk relief.

The September 27, 2004 directives by Carlton and Beverly requiring Marsh to remain at the customer service window, however, did constitute adverse action. The directives prevented Marsh, on those occasions when the customer lines were empty, from leaving the customer service window to catch up on box section maintenance work. Other window clerks were not issued the same directive and were permitted to leave their posts to perform other duties. Marsh was impacted by this adverse action until April 15, 2005, when Carlton left on a temporary assignment.

The Respondent's action adversely affected Marsh because it removed the discretion she had prior to the September 23 meeting to leave the customer service window in order to perform box section maintenance work. The undisputed evidence demonstrated that Marsh was the sole administrator of the box section and that, every month, there was a continuation of boxes that were opened and closed. She was continuously behind in that work and the time that she was able to leave the customer service window enabled her to perform that task. In that regard, the directives amounted to a change in Marsh's work schedule. As such, the directive constituted a material change in the employees' terms and conditions of employment. See *Briar Crest Nursing Home*, 333 NLRB 935, 943 (2001).

2. The denial of preshift overtime

Prior to September 23, 2004, Marsh was frequently authorized, if not directed, to perform preshift overtime work. Marsh had numerous duties, but was primarily responsible for box section maintenance. Preshift overtime enabled her to catch up on that work and was regularly authorized, if not directed, on that basis. At some point between September 23 and October 8, 2004, Carlton told Beverly to remove Marsh's preshift overtime authorization. On December 7, 2004, Carlton directed Marsh to resume preshift overtime work in order to catch up on her box section maintenance. On January 22, 2005, Marsh's preshift overtime authorization was again removed, even though she was not caught up on her box section maintenance work. It was not reinstated again until Carlton was reassigned to another detail on July 12, 2005.

On December 3, 2004, Marsh confronted Carlton as to why he was denying her preshift overtime authorization. Carlton told Marsh it was taken away because an employee informed him that Marsh was doing union work during her preshift overtime. No one ever confronted Marsh, however, about her use of preshift overtime prior to Carlton's assertion on December 3. That silence, coupled with the acrimonious relationship that developed between Carlton and Marsh on September 23, is compelling evidence that her preshift overtime was removed due to her union advocacy on September 23, 2004. The denial of overtime violates Section 8(a)(3) when an employee's union activity is a substantial or motivating factor for the denial. *Lawson*

Printers, Inc., 271 NLRB 1279, 1285 (1984). That would be the case even if Carlton retaliated against Marsh due to the mistaken belief she was engaged in union activity during preshift overtime. *Handicabs, Inc*., 318 NLRB 890, 897 (1995); *Henning & Cheadle, Inc. v. NLRB*, 522 F.2d 1050, 1052 (7th Cir. 1975). Given the lack of credible evidence that, but for Marsh's union activities, the Respondent would have eliminated her preshift overtime authorization during those periods, Carlton's denial of preshift overtime to Marsh during the period of October 9 to December 6, 2004, and January 22 to July 12, 2005, violated Section 8(a)(3) and (1) of the Act.

3. The denial of the use of the desk

Since 2001, Marsh used a desk in the box section area to perform box section maintenance and union work, and store her food. The use of the desk constituted a benefit of Marsh's employment. *Avondale Industries,* 329 NLRB 1064, 1410 (1999). Shortly before the December 3 district labor-management meeting, Carlton, through a supervisor, directed Marsh to remove her things from the desk because it was going to be used elsewhere. She complied. The action taken by Carlton came a day after he was surprised to learn that Marsh was using that desk to process union grievances. The desk was never moved and Marsh resumed using it after Carlton was temporarily reassigned in April 2005. In addition to the suspicious timing of the action, Carlton and Beverly provided contradictory, inconsistent explanations relating to food and visiting postmasters. The action was clearly retaliatory in nature and there was no credible proof that Carlton would have taken the same action in the absence of Marsh's filing of a grievance the day before. Under the circumstances, the Respondent's denial of the use of the desk constituted a violation of Section 8(a)(3) and (1).

Conclusions of Law

1. The National Labor Relations Board has jurisdiction over this matter by virtue of Section 1209 of the Postal Reorganization Act.

2. The Charging Party, American Postal Workers Union, Peninsula Facility Area Local 6726, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(5) and (1) of the Act by failing to respond to the Union's collective-bargaining agreement-related information requests submitted on or about September 8, 20 and 21, October 21 and 26, and November 4, 2004, and September 7 and 23, and October 24, 2005.

4. The Respondent violated Section 8(a)(5) and (1) of the Act by failing to respond in a timely manner to the Union's collective-bargaining agreement-related requests submitted on or about July 26, August 11, September 7, 8 and 20, October 21, 2004, and September 7, 20 and 26, and October 14 and 24, 2005.

5. The Respondent violated Section 8(a)(1) of the Act on September 23, 2004, when Carlton told Swarthout that, if Marsh continued to insist on her rights under the collective-bargaining agreement, he could abolish jobs at the Williamsburg postal facilities.

6. The Respondent violated Section 8(a)(1) of the Act on December 3, 2004, when Carlton told Swarthout he would respond to Marsh's information requests, but it would be slow in coming and it would cost Marsh.

7. By prohibiting Marsh, on or about September 27, 2004, from leaving the customer service window during lunch relief, the Respondent violated Section 8(a)(3) and (1) of the Act.

8. By denying Marsh, on or about October 8, 2004, preshift overtime opportunities because of her union activities, the Respondent violated Section 8(a)(3) and (1) of the Act.

9. By prohibiting Marsh, on or about December 1, 2004, from using a desk that she customarily used in the box section because of her union activities, the Respondent violated Section 8(a)(3) and (1) of the Act.

10. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

11. The Respondent did not engage in any unfair labor practices alleged in the consolidated complaint not specifically found herein.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[82]

ORDER

The Respondent, United States Postal Service, its officers, agents and assigns, shall

1. Cease and Desist from

(a) Undermining the authority of the American Postal Workers Union, Peninsula Facility Area Local 6726, AFL–CIO by telling employees that we will give the Union requested information, but that it would be slow in coming and it would cost the Union's representative.

(b) Changing the job duties of Vicki Marsh, or any other employee, because she engages in activity on behalf of the American Postal Workers Union, Peninsula Facility Area Local 6726, AFL–CIO.

(c) Denying preshift overtime opportunities to Vicki Marsh or any other employee, because she engages in activities on behalf of the American Postal Workers Union, Peninsula Facility Area Local 6726, AFL–CIO.

(d) Denying Vicki Marsh the use of a desk in the box section of the North Boundary Street postal facility because she engages in activities on behalf of the American Postal Workers Union, Peninsula Facility Area Local 6726, AFL–CIO.

[82] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(e) Otherwise discriminating against any employee for engaging in protected concerted activity or supporting the American Postal Workers Union, Peninsula Facility Area Local 6726, AFL–CIO, or any other union.

(f) Threatening to abolish employees' jobs because they assist the American Postal Workers Union, Peninsula Facility Area Local 6726, AFL–CIO.

(g) Failing and refusing to provide information requested by the American Postal Workers Union, Peninsula Facility Area Local 6726, AFL–CIO that is necessary for, and relevant to, the performance of its duties as the exclusive collective-bargaining representative of employees included in the bargaining unit.

(h) Failing and refusing to provide, in a timely manner, information requested by the American Postal Workers Union, Peninsula Facility Area Local 6726, AFL–CIO that is necessary for, and relevant to, the performance of its duties as exclusive collective-bargaining representative of employees included in the bargaining unit.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide full responses to the information requests submitted by the American Postal Workers Union, Peninsula Facility Area Local 6726, AFL–CIO to the Respondent on September 8, 20, and 21, October 21 and 26, and November 4, 2004, and September 7 and 23, and October 24, 2005.

(b) Restore Vicki Marsh's preshift overtime opportunities and make her whole for any loss of earnings and other benefits suffered as a result of the discrimination against her in the manner set forth in the remedy section of the decision.

(c) Restore Marsh to the conditions of employment at the customer service window as they existed prior to the unilateral change on or about September 27, 2004.

(d) Restore Marsh's use of the desk in the box section.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Williamsburg, Virginia, copies of the attached notice marked "Appendix."[83] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these

[83] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 26, 2004.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 27, 2006

_____
Michael A. Rosas
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT fail and refuse to bargain collectively in good faith with the American Postal Workers Union, AFL–CIO and its designated agent, the Peninsula Facility Area Local 6726, as the exclusive representative of our employees included in the following bargaining unit:

INCLUDED: All maintenance employees, motor vehicle employees, postal clerks, mail equipment shop employees, and material distribution center employees, employed by the United States Postal Service.

EXCLUDED: All professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, Postal Inspection Service employees, employees in the supplemental work force, rural letter carriers, mail handlers, letter carriers, guards and supervisors as defined in the Act.

WE WILL provide to the American Postal Workers Union, Peninsula Facility Area Local 6726, AFL–CIO information requested by the Union as set forth in the Board Order.

WE WILL NOT threaten to abolish employees' jobs if they insist on their rights under the Respondent's collective-bargaining agreement with the American Postal Workers Union, Peninsula Facility Area Local 6726, AFL–CIO.

WE WILL NOT undermine the authority of the American Postal Workers Union, Peninsula Facility Area Local 6726, AFL–CIO by telling employees that we will give the Union requested information, but it will be slow in coming and stating or implying that it will adversely affect the Union's representative.

WE WILL NOT change the requirements of the work assignments of Vicki Marsh, or any other employee, because she engages in activity on behalf of the American Postal Workers Union, Peninsula Facility Area Local 6726, AFL–CIO.

WE WILL NOT deny overtime opportunities to Vicki Marsh, or any other employee, because she engages in activities on behalf of the American Postal Workers Union, Peninsula Facility Area Local 6726, AFL–CIO.

WE WILL NOT deny Vicki Marsh the use of a desk in the box section of the North Boundary Street postal facility because of her activities on behalf of the American Postal Workers Union, Peninsula Facility Area Local 6726, AFL–CIO.

WE WILL NOT fail or refuse to respond to information requests by the American Postal Workers Union, Peninsula Facility Area Local 6726, AFL–CIO that are necessary for, and relevant to, the performance of its duties as the exclusive collective bargaining representative of employees included in the bargaining unit.

WE WILL NOT fail or refuse to respond, in a timely manner, to information requests by the American Postal Workers Union, Peninsula Facility Area Local 6726, AFL–CIO that are necessary for, and relevant to, the performance of its duties as the exclusive collective bargaining representative of employees included in the bargaining unit.

WE WILL make Vicki Marsh whole for any loss of pay she may have suffered because of our discriminatory denial of preshift overtime opportunities.

WE WILL expunge from Vicki Marsh's personnel file any reference to our discriminatory denial of overtime opportunities to her.

WE WILL restore Vicki Marsh to the requirements of the work assignments given to her prior to the September 27, 2004 changes regarding her duties while working at the customer service window.

WE WILL NOT in any other manner interfere with, restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the National Labor Relations Act.

UNITED STATES POSTAL SERVICE.

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

103 South Gay Street, The Appraisers Store Building, 8th Floor
Baltimore, MD 21202-4061
Hours: 8:15 a.m. to 4:45 p.m.
410-962-2822.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 410-962-3113.